

United States District Court  
For The District of Massachusetts

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Anthony Ivery

DISTRICT COURT  
MASS  
Civil Case NO. 1:04-CV-12125

Vs.

Crim. Case NO. 00-10334-RWZ

J. Wendt, Warden et. al.

Petitioner's Motion For Filing  
Amended And Supplemental pleadings  
Fed. R. Civ. Proc. Rule 15(a) & (b)

The petitioner moves before This Court with his Supplemental Pleading & Amended Issue to be added to the previous Issue that was filed before This Court.

For the petitioner wish to submit the issue of the drug compounds were never tested, and that if tested would have been less than 4.1 Grams, and therefore, this petitioner has been unlawfully sentence under 4.1 Grams of Cocaine Base.

The petitioner asserts that on or about April, 6<sup>th</sup> & 13<sup>th</sup>, 2000. It was asserted that the petitioner distribute Cocaine Base under 21 U.S.C. § 841(a) of 4.1 Grams, to an informant, he was serving out a one year term of probation at the time, his probation was revoked for a unrelated incident, and the petitioner was ordered to serve one year in confinement for the probation violation, upon the completion of probation violation, the petitioner was indicted and taken into federal custody for the selling of Cocaine to an informant on April, 6<sup>th</sup> & 13<sup>th</sup> 2000.

The petitioner asserts AND the Court records reveals that the alleged Cocaine that the petitioner was suppose to have sold was 4.1 Grams, the Cocaine was suppose to be field Tested at the mid-Atlantic Georgia Laboratory.

Do to the amount of Cocaine the mid-Atlantic Laboratory refused to have the Cocaine Tested (or) to reveal the results over the phone, but the prosecution nevertheless still indicted the petitioner with Cocaine possession, now because the Substance taken from the petitioner was never Tested AND Confirmed the Charges against the petitioner should have been dismissed.

For the Substance was never Tested (or) analyzed, for no determination was ever made as to the Contents of the Substance AND it was never Confirmed that the 4.1 Grams was all Cocaine.

Even if the Substance was to be found as Cocaine Base, the amount of Cocaine within the Base form would not amount to 4.1 Grams, AND therefore would not be enough to be considered under the Federal Law and statutes to be a Federal offense as pursuant to U.S.S.C. § 2D1.1(c)(8) in order to place the defendant at a offense Category 24.

### Relief sought

The petitioner seeks for this Court to Order the reduction of his sentence below the Category level of 24 AND (or) to vacate the petitioner's Conviction AND remand his Case to the District Court for dismissal.

Respectfully Submitted

~~Anthony Ivery~~

Anthony Ivery #23351-038

F.C.I. Gilmer, P.O. Box #6000  
Glenville, West Virginia 26351

I declare under the penalty of perjury that the information in this motion is true & correct to the best of my knowledge as according to 28 U.S.C. § 1746.

~~Anthony Ivery~~  
Anthony Ivery

### Certificate of Service

I hereby declare that a copy of this motion to supplement pleadings was mailed postage pre-paid to the following on this 1<sup>st</sup> day of November 2004

Asst. U.S. Attorney  
Joseph N. Laplante  
Courthouse Way  
Boston, MA 02210

~~Anthony Ivery~~  
Anthony Ivery #23351-038

